

HAMPTON VA



July 22, 2016

The Honorable Donnie Tuck, Mayor
Members of City Council
City Hall
22 Lincoln Street
Hampton, VA 23669

RE: End of Year Report

Dear Mayor Tuck and Members of City Council:

The City Attorney's Office has now completed two fiscal years of reporting and FY 2016 has been an outstanding year for this office in cost savings to the taxpayers of Hampton. I have the distinct pleasure of advising you that the City Attorney's Office saved the City \$3,913,180.40 by utilizing in-house attorneys and paralegals. This time last year the costs savings to the City were \$2,189,901.41. It should be noted that several attorneys in this office are clocking hours comparable to the top law firms in the Commonwealth. I could not be prouder of this staff and I hope you will join me in thanking them for an outstanding job.

The City Attorney's Office is proud to support the mission of the City by providing quality legal services to the City Council, City departments, City employees, City boards and commissions, the Commissioner of the Revenue, the Assessor of the Real Estate, the Treasurer and the Economic Development Authority.

Introduction

The City Attorney's Office has had a banner year providing services. As reported to you previously, customer surveys provided by the departments we serve have been overwhelmingly complimentary of our attorneys and the office in general. Our litigators are in court trying cases every day in the areas of social services, animal control, gateway misdemeanors, property maintenance violations, and state and federal claims against the City. They continue to work with other government lawyers in the Commonwealth and the International Municipal Lawyers Association to address issues that affect all local governments. Our development/finance lawyers are manning EDA, Planning Commission, BZA, FADA, Parking Authority, and Wetlands Board meetings as well as dozens of sub-committees and advisory committees appointed by Council. Moreover, they are working hand in hand with our Constitutional Officers. These attorneys also cross into litigation enforcing zoning, land disturbance, stormwater and solid waste violations. Together with members of the litigation team they are also defending tax assessment cases in court. The team structure has been very beneficial to us and our clients and I would like to take the time to summarize some of their accomplishments this past fiscal year.

City Attorney's Office

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Development /Finance Team

- Promoted the City's quality of life initiatives through revision of the Special Events process (which included multiple City Code amendments and staff training); adoption of the Arts & Cultural District in Downtown and Phoebus; and developed and codified an administrative process making outdoor seating more easily available to certain local entertainment establishments.
- Assisted with the City's Hotel Initiative through the acquisition and demolition of the Motel 6 site;
- Supported the City's initiative to counter youth violence through counsel and oversight to the Youth Violence Prevention Program in the solicitation and award of grants to local organizations that work to prevent youth violence throughout the City;
- Conducted multi-jurisdictional negotiations related to the MS4 (Municipal Separate Storm Water System) Permit, in conjunction with Hampton Roads Planning District Commission and the Department of Environmental Quality. The City was able to successfully avoid all financial penalties;
- Prepared substantial amendments to the sign ordinances to address the Supreme Court decision in *Reed v. Town of Gilbert*.

The Development/Finance Team is currently engaged in performing a complete overhaul of the Procurement ordinance and Procurement contract templates as well as the Solid Waste Management Ordinance. This team is integral to the City's economic development initiatives in the drafting of development and performance agreements as well as performing the acquisitions and dispositions of real property. The success of the Clear Zone acquisitions is in part due to the performance of this team.

Litigation Team

In addition to the Litigation Reports previously sent to Council in December 2015 and June 2016 which provided a detailed summary of the significant litigation accomplishments achieved by the Litigation team since July 1, 2015, of note are:

- The successful litigation in Circuit Court of the Coliseum Drive Apartments v. City of Hampton & H2O Community Development case which ultimately led to the property owner paying the real estate taxes, special assessments, late fees and interest, all of which totaled over \$1.3 million, in full; and
- The defense and dismissal of several federal cases filed against the City and Hampton employees, including police officers, based on motions filed and briefed by the City Attorney's office and upheld on appeal to the Fourth Circuit Court of Appeals.

The litigation team took on the daunting task of developing amendments to the City's Hotel ordinance pertaining to extended stays to address the issue presented by the 2015 United States Supreme Court decision in *Los Angeles v. Patel*, which struck down a Los Angeles ordinance requiring that hotel management allow police to search their hotel registries at any time. The Los Angeles provision was nearly identical to the same provision in the City's hotel ordinance, used to combat unlawful extended stays in hotels. While working on a solution to the *Patel* case, the litigation team discovered that other portions of the City's ordinance did not comport with the authority given by the Virginia Code. However, the team was able to find a provision in the City's Charter that would allow conversion of the hotel permitting process to a licensing

requirement, with the ability to require provision of the registries as a condition of the license. The result was the adoption of the Hotel ordinance amendments this July.

The litigation team has also succeeded in developing and presenting training opportunities for City employees that benefit the City by fostering a better understanding of the laws and potential liabilities. These trainings have been on a variety of topics including: FOIA, COIA, FLSA, FMLA, ADA, City Code, Court Procedures, Crisis Intervention, Child Protective Services, and Adult Protective Services. In addition to in-person training, attorneys working with the Police Division have provided written training bulletins to provide officers with guidance on new case law.

The litigation team has worked closely with the Human Resources department to provide critical legal advice to avoid or reduce liability associated with employment actions including employee discipline. This includes representation in over 13 grievances and EEOC matters since July 1, 2015.

This team is currently engaged in the research and development of strategies to address “panhandling” after the Fourth Circuit decisions in *Reynolds v. Middleton* and *Clatterbuck v. City of Charlottesville*. The team is collaborating with the Virginia Local Government Attorneys Association to develop ordinance amendments that will survive a challenge by the ACLU.

Cost Saving Measures

Legal Services Brought In-House

In addition to our representation of the Economic Development Authority and the Treasurer in judicial and non-judicial tax sales, our office has also undertaken HazMat Cost recovery for the Fire Division. To date, the City Attorney’s Office has successfully collected \$16,822.09 of a total \$21,905.63 owed. Several of these cases have advanced to court and are pending resolution or in cases where judgments have been obtained, garnishments are being pursued. The office has also recently begun collection of false alarm fire fees owed pursuant to City Code. These recent changes have saved the City thousands of dollars in outside legal fees and recovered funds for the City that were previously uncollected.

The City Attorney’s office also continues to manage all Freedom of Information Act (“FOIA”), subpoena duces tecum (“SDT”), medical records, and social services records requests for all City departments and divisions. Since July 1, 2015, the office has processed, reviewed, and responded to the following number of requests:

- FOIA – 1,547
- SDT – 120
- Medical Records – 235
- Social Services Records – 40 (began December 2016)

The number of FOIA requests continues to rise and of note since last year is the increase in review time associated with body worn camera footage often associated with these requests. Some reviews take less than an hour while others have taken several days based on the number of police officers involved. This review time will be closely monitored in the coming months as more officers are equipped with body cameras, and the demand for footage review will definitely require more man hours.

Cost-Sharing With Other Departments

As stated in prior reports, in order to meet the demand for legal services within our budget constraints, our office arranged for cost-sharing of attorney and paralegal positions and offices resources essential to direct legal service delivery as follows:

1. 1 attorney position and 1 paralegal position – funded by Public Works (Stormwater Management)
2. 1 attorney position – 50% funded by Risk Management
3. 1 attorney position – partly funded by Department of Finance
4. 1 paralegal position – fully funded by Treasurer for judicial and non-judicial tax sales
5. Westlaw legal research services, PACER, and RICOH copier services – 50% funded by Risk Management

Key Service Delivery Data

The following statistics are intended to show the present cost and allocation of legal resources. We now have a comparison from end of year FY2015 and end of year FY2016. The data submitted in this report, both present and comparison data shows that the cost for in-house legal service delivery continues to be substantially below the costs required to obtain legal services from private law firms.

In order to analyze the data, we averaged the billing rate for the in-house staff members based on their salaries plus 40% for benefits. The average hourly rate for the city attorneys, plus 40% benefits and including my salary, is \$65.32 which is slightly higher than last year's figure of \$62.40 due to the 2% raise given by Council. For paralegals, the average hourly rate is \$28.37 which is slightly higher than last year's rate of \$25.13 due to the 2% raise.

We also calculated the hourly cost for the outside counsel used by the City and averaged the hourly rates. The average hourly rate of the outside legal counsel is \$294.00 for the attorneys and \$127.50 for their paralegals which is on average 78% higher than the average in-house rates stated above.

While we try to fill vacancies at a lower level, it will become increasingly difficult to attract and keep these attorneys inasmuch as they are paid \$6,000.00 to \$10,000.00 less than their counterparts in Chesapeake and Virginia Beach.

From July 1, 2015 through June 30, 2016, this office directly provided 19,231.46 total hours of legal service (15,490.28 in attorney hours and 3,741.18 in paralegal hours). This time last year our hours were 12,237.43 total hours of legal service (9,966.53 in attorney hours and 2,270.90 in paralegal hours) for an increase of 6,994.03 hours over FY2015. This number does not include hours spent completing administrative tasks, supervision of attorneys by senior attorneys, professional development, or training. It only reflects direct legal service time to clients.

As shown on the attached chart, if the 19,231.46 hours in-house legal services had instead been provided by outside counsel, the cost to the City would have been \$5,031,142.77. At the in-house rate, the cost was \$1,117,962.37, generating \$3,913,018.40 in savings for the fiscal year.

counsel fees for July 1, 2015 through June 30, 2016 totaled \$318,786.10. This time last year, fees were \$532,129.42 for a savings of \$213,343.32. Service hours delivered by outside counsel were far less than in-house attorneys.

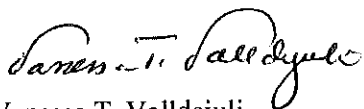
Legal Service Hours to Major Departments

Although the City Attorney's Office represents all City departments as well as its major boards and commissions, some departments consume a substantial amount of service hours which overlap team function areas. The majority of legal service hours were devoted to the Police Division (includes animal control) (3,399.71 hours), Public Works (includes engineering, traffic, operations, steam plant and wastewater) (2,024.47 hours), Community Development (includes Planning, Zoning, Code Enforcement and Development Services Center, BZA, and Planning Commission) (1,789.57 hours), Social Services (1,732.80 hours), Economic Development (includes the EDA) (1,439.29 hours), the Fire Division (985.46 hours), City Manager (757 hours), and Consolidated Procurement (714 hours).

The City Attorney's Office continues to be committed to providing the highest quality legal service at the lowest possible costs to the Hampton taxpayers. We look forward to continuing our work supporting key City services and City Council objectives.

If you have any questions about the information provided here, please call on me. Thanking you for allowing the office of the City Attorney to be of service, I am

Respectfully yours,



Vanessa T. Valldejuli
City Attorney

cc: Mary B. Bunting, City Manager
Katherine K. Glass, Clerk of Council

CITY ATTORNEY'S OFFICE | 2016 YEAR-END REPORT

TEAM STRUCTURE

LITIGATION



5 Attorneys

DEVELOPMENT & FINANCE



4 Attorneys

&

City Attorney as chief
counsel to EDA

SUPPORT STAFF



5 Paralegals

&

2 Legal Assistants

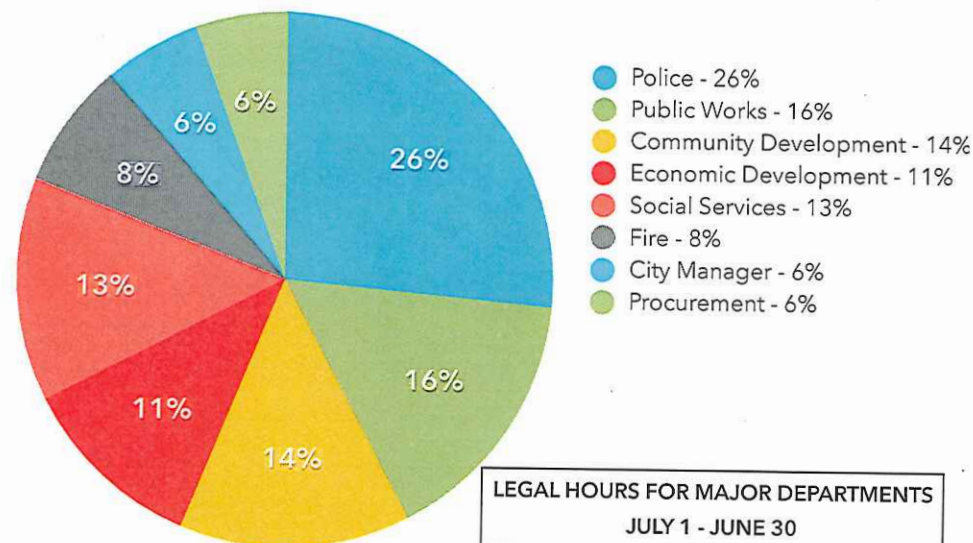
DIRECT SERVICE HOURS

	Year-End 2015	Year-End 2016
Attorney Hours	9,966.53	15,490.28
Paralegal Hours	2,270.90	3,741.18
TOTAL	12,237.43	19,231.46

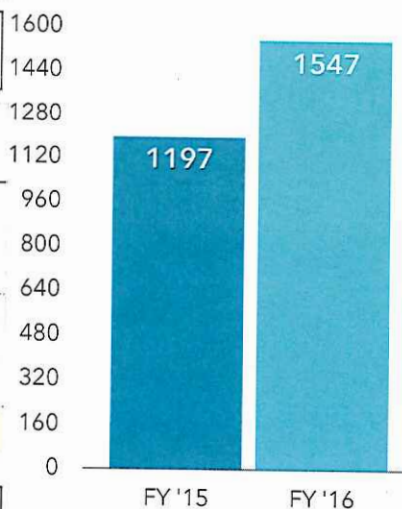
*Does not include time billed to CAO for supervision by senior attorneys, professional development, training, or file/record management, only direct service hours

Outside vs. In-House Counsel	COST TO CITY
@ Average Outside Counsel Rate (\$294.00/hr attorneys; \$127.50/hr paralegals)	\$5,031,142.77
@ Average CAO Salaried Rate* (\$65.32/hr attorneys; \$28.37/hr paralegals)	\$1,117,962.37
SAVINGS OVER FISCAL YEAR	\$3,913,018.40

*Average rate based upon salaries plus 40% added for benefits



FOIA REQUESTS



GATEWAY MISDEMEANORS

